REMARKS

Claims 10-30 are now in the application. The personal interview so courteously granted by Primary Examiner Prebilic is hereby noted with appreciation. Claims 10-19 and 23 -27 are drawn to the elected invention. Claims 20-22 and 28-30 are directed to the non-elected invention and may be cancelled by the Examiner upon the allowance of the claims directed to the elected invention.

Claims 10-19 and 23 were rejected under 35 USC 103(a) as being unpatentable over US Patent 5,356,629 to Sander et al.(hereinafter also referred to as "Sander") in view of US Patent 5,470,582 to Supersaxo et al. (hereinafter also referred to as "Supersaxo"). The cited references do not render obvious claims 10-19 and 23.

Sander relates to moldable implants. The examples of Sander refer to the moldable compositions as putties. As discussed during the interview, one of ordinary skill in the art understands the definition of "gel," and would never consider a "putty" composition to fall within that definition. A gel can be defined as "a colloid in which the disperse phase has combined with the continuous phase to produce a jelly-like product." See Hawley's Condensed Chemical Dictionary 555 (12th Ed. 1993). In fact, as pointed out during the interview, a reason for allowance in applicant's parent application was that the art related to a putty and not a gel. The issue in that application was similar to that in this application even though a different reference, i.e. US Patent 5,597,897 to Ron, was being applied as the primary reference. (US Patent 5,356,629 to Sander, the primary reference used in this application, was considered in the parent case and was applied as a secondary reference in a rejection on page 8(copy enclosed) in an office action dated October 30, 2002.)

In the parent application, the Examiner stated on pages 2 and 3(copy enclosed) of the Notice of Allowability dated May 21, 2003 under Reasons for Allowance:

----Appellant argued that the material of Ron (US 5,597,897) does not constitute a gel as defined by Hawley's Condensed Chemical Dictionary. Appellant defined gel as "a colloid in which a disperse phase has combined with the continuous phase to produce a jelly-like

product." The examiner asserts that the Appellant has estopped himself from any other definition by this argument. Therefore, since Ron does not clearly disclose that the mixture has all the properties of a gel as set forth in Appellant's definition thereof, the Examiner posits that Ron fails to anticipate or render obvious the present claims."

The importance of the claim recitation "gel" was further confirmed in the Reexamination of the parent patent at page 2 (copy enclosed) under the Statement of Reasons for Patentability and/or Confirmation as follows:

"Further a 'gel' is seperately defined as a jellylike substance formed by cooling a colloidal solution into a solid" (see Webster's New World Dictionary, Third Edition)."

The malleable putties of Sander are not inherently gels and even more remote are not hydrogels.

Also, as stated during the interview, Sander does not even remotely suggest a product that is reconstitutable, which upon the addition of water becomes a bioresorbable, injectable implant product that is a hydrogel.

In addition, as mentioned during the interview, Sander does not require employing microparticles as recited in the present claims. If anything, Sander teaches away from selecting microparticles of the biocompatible particles since the preferred biocompatible particles have an average particle size of about 0.1 to about 3 mm (see column 4, line 34). Moreover, Sander has failed to attach any importance to the particle size of the biocompatible material since the examples do not even remotely refer to the particle sizes of the biocompatible material.

It should also be noted that the polymers of the microparticles recited in the present claims are merely a small group of the numerous possible polymers contemplated by Sander.

In addition, the cellulose derivatives that can be employed according to the present invention act as gelling agents upon the addition of water. On the other hand, the cellulose derivatives that can be employed in Sander are to function as the matrix in which the biocompatible material is to be dispersed and not as a gelling agent.

As discussed during the interview, the above differences between the present claims and Sander are important in view of the vastly different uses intended and the distinct properties needed for these uses. In particular, Sander is concerned with an implant into a bone defect site. The material of Sander after being implanted is to be shaped such as with a spatula and once it is dried it will harden. On the other hand the claimed products after being reconstituted are to be injected to fill up wrinkles, thin lines, skin cracks and scars, for reparative or plastic surgery, aesthetic dermatology, and for filling up gums in dental treatment. Accordingly having a material that hardens as a bone graft such as Sander would be detrimental for the uses intended for the products of the present invention upon being reconstituted. Such reconstituted materials should remain flexible and soft like skin not hard like bone.

Supersaxo does not overcome the above discussed deficiencies of Sander with respect to rendering obvious claims 10-19 and 23. Supersaxo was relied upon for a disclosure of freeze drying in order to stabilize the materials for storage. Accordingly, even if Supersaxo were combined with Sander, the present invention would still not be suggested. In particular, even if materials of Sander, as discussed during the interview, were freeze dried, such materials would not be reconstitutable, which upon the addition of water become bioresorbable, injectable implant products that are hydrogels, according to the present claims. To be reconstituable to a gel or more especially to a hydrogel, the composition that is freeze dried would need to be in the from of a hydrogel prior to the freeze drying. As discussed above, the products of Sander are not hydrogels.

Claims 24-27 were rejected under 35 USC 103(a) as being unpatentable over Sander and Supersaxo and further in view of US Patent 5,599,852 to Scopelianos et al. The cited references do not render obvious claims 24-27. Scopelianos et al do not overcome the above discussed deficiencies of Sander and Supersaxo with respect to rendering obvious claims 10-19 and 23. Scopelianos et al were merely relied upon for a disclosure of including a kit with a syringe. Accordingly, claims 24-27 are patentable for at least those reasons as to why claim 10 is patentable.

Furthermore, the cited art lacks the necessary direction or incentive to those of ordinary skill in the art to render a rejection under 35 USC 103 sustainable. The cited art fails to provide the degree of predictability of success of achieving the properties attained by the present invention needed to have a rejection under 35 U.S.C. 103 sustained. See *KSR Int'l Co. v. Teleflex,* 127 S. Ct. 1727 (2007), *Diversitech Corp. v. Century Steps, Inc.*, 7 USPQ2d 1315 (Fed. Cir. 1988), *In re Mercier*, 187 USPQ 774 (CCPA 1975) and *In re Naylor*, 152 USPQ 106 (CCPA 1966).

Moreover, the properties of the subject matter and improvements which are inherent in the claimed subject matter and disclosed in the specification are to be considered when evaluating the question of obviousness under 35 USC 103. See *KSR Int'l Co. v. Teleflex,, supra, Gillette Co. v. S.C. Johnson & Son, Inc.*, 16 USPQ2d 1923 (Fed. Cir. 1990), *In re Antonie*, 195 USPQ 6 (CCPA 1977), *In re Estes*, 164 USPQ 519 (CCPA 1970), and *In re Papesch*, 137 USPQ 43 (CCPA 1963).

No property can be ignored in determining patentability and comparing the claimed invention to the prior art. Along these lines, see *In re Papesch*, supra, *In re Burt et al*, 148 USPQ 548 (CCPA 1966), *In re Ward*, 141 USPQ 227 (CCPA 1964), and *In re Cescon*, 177 USPQ 264 (CCPA 1973).

In view of the above, consideration and allowance are respectfully solicited.

In the event the Examiner believes another interview might serve in any way to advance the prosecution of this application, the undersigned is available at the telephone number noted below.

The Office is authorized to charge any necessary fees to Deposit Account No. 22-0185.

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Respectfully submitted,

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